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Department of Energy

ROCKY FLATS FIELD OFFICE
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JUN 30 1995

95-DOE-08494

Mr. Martin Hestmark
U. S. Environmental Protection Agency, Region VIII
ATTN: Rocky Flats Project Manager, 8HWM-RI
999 18th Street, Suite 500, 8WM-C
Denver, Colorado 80202-2405

Mr. Joe Schieffelin, Unit Leader
Hazardous Waste Facilities
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80222-1530

RE: Elevation of Operable Unit 1 Dispute

Gentlemen:

In our letter to you of June 22, 1995, Department of Energy (DOE) initiated informal dispute resolution for Operable Unit 1 (OU 1). In our joint telephone conferences during this last week we have attempted to reach some resolution, without success. The DOE sees no reason to delay elevation of this dispute. This letter and enclosures, therefore, serve as DOE's portion of the joint statement by the Project Coordinators to the Dispute Resolution Committee pursuant to paragraph 93 of the Interagency Agreement (IAG).

It has always been DOE's position that the low risk levels and limited source of contamination at this site warrant No Action. Due to our conservative Regulatory atmosphere, DOE in our final Proposed Plan (PP), included monitoring to ease concerns about the future potential for the plume to mobilize. We have since offered compromises to include continued monitoring at the French drain with ARARs as the trigger level for further action. These compromises were not acceptable to the Colorado Department of Public Health and Environment (CDPHE). These compromises were offered in the spirit of conciliation, but are still not considered necessary to be protective, and are no longer offered by the DOE.

The EPA and CDPHE have consistently asserted that any No Action PP is unacceptable. DOE has submitted as Enclosure 1, the sequence of events leading up to the elevation of this dispute. Enclosure 2 is the correspondence between the agencies since submittal of the PP. DOE believes that the record shows that DOE has consistently supported No Action as the preferred alternative at OU 1.

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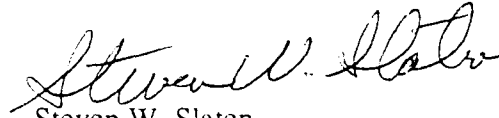
M. Hestmark & J. Schieffelin
95-DOE-08494

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As the enclosures show, the OU 1 consultations have been ongoing for a long period without resolution. It is DOE's hope that by this elevated dispute resolution process, a reasonable outcome for this OU can be realized. If you have any questions you may call me at 966-4839.

Sincerely,



Steven W. Slaten
IAG Project Coordinator
Environmental Restoration

Enclosures

cc w/Enclosures:

J. Ahlquist, EM-452, HQ
C. Gesalman, EM-453, HQ
K. Klein, OOM, RFFO
S. Grace, ER, RFFO
C. Spreng, CDPHE
B. Fraser, EPA
E. Dillé, SAIC
W. Busby, EG&G
P. Laurin, EG&G
R. Roberts, EG&G

D. George

Previous OU 1 Meetings and Discussions

OU 1 - Phase III RFI/RI Report

Submitted Draft RFI/RI Report	10/28/92
EPA/CDH (CDPHE) Comments received	1/12/93 and 1/29/93
Meetings to discuss/resolve comments	2/8/93, 2/10/93, 2/17/93, 2/26/93 3/4/93, 3/10/93, 3/15/93, 3/18/93 3/26/93, 4/2/93, 4/8/93 7/13/93, 7/21/93, 10/22/93
Submitted Final RFI/RI Report	11/5/93
Walk-thru of Sections 1, 2 & 3	11/26/93
Walk-thru of Sections 4 & 5	12/3/93
Walk-thru of risk assessment	12/13/93 and 12/17/93
EPA/CDH (CDPHE) comments on "Final" received	1/20/94
Meeting to discuss comments	1/24/94
Additional EPA comments received	2/17/94
*At this point we believed we had consensus resolution.	
Revised Final RFI/RI Report submitted	6/15/94
EPA/CDPHE comments on Revised Final	10/28/94 and 9/21/94
Revised Final conditionally approved per comment resolution	

OU 1 Corrective Measures Study/Feasibility Study (CMS/FS) Report

Scoping meeting with EPA and CDPHE	1/6/94
Preliminary Remediation Goals (PRG) scoping	1/28/94
Groundwater issues and modeling discussion	2/1/94
PRG technical memo comment resolution	5/13/94
Groundwater model discussion	5/23/94
CDPHE "guidance" on modeling received	6/22/94
IHSS by IHSS modeling discussion	7/11/94, 7/22/94
Submitted Draft CMS/FS Report	8/25/94
EPA/CDPHE comments on CMS/FS received	10/7/94 and 11/1/94

Chronological List of Events since November, 1994. Operable Unit 1

November 3, 1994 - DOE requests extension due to late response and comments by CDPHE on Draft CMS/FS.

November 10, 1994 - DOE letter to CDPHE and EPA- Proposed Stop Work based on RI and FS issues. Go to 5 week dispute Resolution Committee.

November 22, 1994 - No extension letter in hand so DOE transmits Initial Draft Proposed Plan recommending Institutional Controls and No French Drain.

November 22, 1994 - CDPHE to DOE - 30 Day extension letter to resolve comments and improve the Consultative Process.

December 16, 1994 - CDPHE to DOE - Schedule extension based on DOE's willingness to address the Agencies' comments on CMS/FS and other issues.

January 20, 1995 - EPA to DOE - 15 day schedule extension to resolve Point of Compliance issues. EPA and CDPHE agree, depending on the selected remedy, that POC should be down gradient of the French Drain.

February 13, 1995 - Revised Final CMS/FS and Draft Proposed Plan transmitted to regulators. Proposed Plan modified to recommend Institutional Controls with French Drain.

April 11, 1995 - CDPHE to DOE - Comments on Final CMS/FS, and CDPHE's response to DOE's response to the original set of comments. No comments received on Proposed Plan.

April 11, 1995 - OU 1 Working Group Meeting - DNAPL presentation, discussion on POC, accelerated schedule, ARAR compliance. Data presented showed that contamination had not reached the French Drain. Based on this it was decided to no longer treat this water. It was decided that using the French Drain exclusively would not achieve ARARs. The recommendation in the Proposed Plan was eliminated given this data. A Technical Impracticability waiver would have to be invoked by EPA to make this action viable. Waivers could not be made by just using the French Drain. New Proposed Plan alternative was discussed with possibility of achieving TI waiver.

April 27, 1995 - OU-1 Working Group Meeting - Technical Impracticability Briefing, Legal Compliance Briefing to include POC issues. DOE must demonstrate Technically Impracticability to get ARARs waiver.

May 2, 1995 - EPA to DOE - Transmittal of Final CMS/FS and Proposed Plan comments.

May 3, 1995 - DOE/EPA/CDPHE coordinator meeting. Excavation options discussed. DOE pushed No Further Action. EPA says that DOE must do something to achieve cleanup since they are in violation of ARARs. Recommend SVE. Could get TI Waiver if DOE tries SVE.

May 4, 1995 - DOE/ERMSA Meeting - DOE looks at alternatives. Selects SVE as best alternative if they have to do something, based on having to meet ARARs.

May 8, 1995 - DOE proposes to CDPHE and EPA to potentially have Rocky Flats Environmental Institute perform a Treatability Study using the OU 2 SVE unit. Data from study would be used for either a TI waiver or achieve cleanup. Project originally scoped for 2 years and \$2M. Scope was later changed to 1 year at \$800K. DOE directed EG&G to prepare a Proposed Plan recommending this option.

May 12, 1995 - DOE faxes EPA and CDPHE Draft Copies of Revised Final Proposed Plan. Proposed Plan recommends "Groundwater Pumping and Soil Vapor Extraction".

May 15, 1995 - OU1 Working Group meets and marks up the revised Proposed Plan. EPA requested revised cost analysis. DOE requests an extension from May 18, 1995 to May 25, 1995, to revise the plan for final transmittal. All regulatory comments are addressed on the markup.

May 18, 1995 - DOE/EG&G/Dames and Moore/K-H meeting - The combined Staff discuss and study actual need to do something. Consensus was that no action was required due to the low risk levels involved. ARARs are not applicable for No Action alternatives based on OSWER directives. A decision to rewrite the Proposed Plan was made.

May 18, 1995 - DOE had not received the one week extension letter. D. George calls both EPA and CDPHE to inquire about the status of the extension letter. During the conversations with the regulatory agencies, he indicates that the revised Proposed Plan would be "No Action".

May 19, 1995 - DOE receives a Fax of the one week extension letter from EPA. The letter also provides for not treating the French Drain water and reduced well monitoring.

May 22, 1995 - DOE receives copies of the Final "No Action" Proposed Plan from Dames and Moore. Copies are Faxed to CDPHE and EPA.

May 25, 1995 - DOE transmits the Final "No Action" Proposed Plan to CDPHE and EPA. A response to comments is attached. Public comment period is proposed to begin on June 1, 1995, and finish on July 31, 1995. The public hearing is proposed to be held on June 21, 1995.

May 31, 1995 - Meeting with all three parties following QAT. DOE offers to have briefing to relay all technical information on OU1. EPA and CDPHE decline offer.

June 1, 1995 - DOE receives a request from EPA to provide the May 15, 1995 version of the Proposed Plan on disk to them. The EPA also requests the minutes from the meeting.

June 2, 1995 - EPA letter to DOE disapproving the Proposed Plan. The basis for the disapproval is that the other alternatives were not evaluated or discussed. Public comment period is delayed.

June 2, 1995 - Dames and Moore provides requested meeting minutes, marked up Proposed Plan, and diskette to EPA.

June 6, 1995 - DOE letter to CDPHE and EPA responding to comments. DOE offers to include EPA and CDPHE versions of the Proposed Plan under a single cover and to go to the public.

June 8, 1995 - CDPHE and EPA letter to DOE disapproving the Proposed Plan. Five criteria are listed which would need to be incorporated to achieve approval.

June 16, 1995 - DOE letter to CDPHE and EPA. DOE highlights that approval of the final Proposed Plan is not required. DOE proposes resolution on the 5 criteria stated in the June 8th letter, provided that action levels occur below French Drain..

June 20, 1995 - CDPHE letter to DOE in response to the June 16th DOE resolution letter. CDPHE rejects the DOE proposal on monitoring well locations and action levels.

June 21, 1995 - D. George faxes CDPHE and EPA conceptual monitoring plan for review. Presents 3 step plan, which ARARs as action points. Staff telephone discussions ensue.

June 22, 1995 - DOE letter to CDPHE and EPA initiating dispute. DOE to dispute the disapproval of the "No Action" Proposed Plan.

June 26, 1995 - CDPHE faxes DOE a revised monitoring plan. CDPHE still requires action at detection limits. Staff telephone conversations stall since the CDPHE maintains that action begins with detection limits. Some contaminants are already above detection limits at the French Drain, but are below ARARs. CDPHE requests cost estimates for various remedial actions. DOE agrees to provide the data.

June 30, 1995 - DOE to CDPHE and EPA providing cost estimate data. DOE proposes ARAR action levels at the French Drain sump, otherwise, will further dispute "No Action".